

Members

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CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES

Meeting Date: November 7, 2002
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Luke Kenley, Chairman; Sen. Anita Bowser; Sen. Sue Landske; Sen. Sam Smith, Jr.; Rep. John Frenz; Professor Cynthia Baker; Mr. Dave Remondini, representing Chief Justice Randall T. Shepard, Indiana Supreme Court; Judge Sanford Brook, Chief Judge, Indiana Court of Appeals; Ms. Heather Sewell, representing Secretary of State Sue Ann Gilroy; Mr. Jon Laramore, representing Governor Frank O'Bannon.

Members Absent: Rep. Robert Behning; Rep. Ralph Foley; Rep. Robert Kuzman; Ms. Jennifer Thuma, representing Attorney General Steve Carter; Ms. Debbie Lynch, Esq.

Staff Present: Mr. John Stieff, Director, Office of Code Revision; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. Tim Tyler, Recodification Editor and Senior Staff Attorney, Office of Bill Drafting and Research; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

I. CALL TO ORDER

The meeting was called to order at 10:10 a.m. by Mr. John Stieff, Director, Office of Code Revision.

II. INTRODUCTORY REMARKS

Mr. Stieff explained that the two major projects to be addressed at the meeting are the recodification of Title 10 of the Indiana Code (State Police, Civil Defense and Military Affairs) and the technical corrections bill. He explained that the technical corrections bill is non-substantive in nature and that the Legislative Services Agency "bends over backward" to ensure no substantive changes are made.

III. TITLE 10 RECODIFICATION

Mr. Timothy Tyler, LSA Senior Staff Attorney and Recodification Editor, distributed copies of the first preliminary draft of the Title 10 recodification bill (PD 3343) to the members of the Code Revision Commission. He stated that this preliminary draft was based on the original outline mailed to Commission members and interested parties last spring and did not contain the changes approved by the Commission at its last meeting.

Mr. Tyler said there were only two questions concerning the recodification draft that staff needed to discuss with the Commission. He said the first question concerned a provision on Page 81 of PD 3343 that establishes the membership of a County Emergency Management Advisory Council. He stated the current statute requires the president of the county executive to be a member of this council, but a county executive is not required to elect a president under IC 36-2-2. Mr. Tyler said one option to address this issue was to add language to this provision that indicated if the county executive did not have a president, then a member of the county executive appointed from its membership would be a member of the Council.

The second question, he said, concerned the absence of language on Pages 94 and 96 that specified the criminal intent necessary to commit offenses concerning the emergency management and disaster law. Mr. Tyler stated the current provisions said, "A person who violates this chapter commits a Class B misdemeanor." He stated that criminal offense statutes normally contain some or all of the words "knowingly, intentionally, or recklessly."

Mr. Tyler then distributed the case of *Wagerman v. State*, 597 NE2d 13 (August 5, 1992) in which the Indiana Court of Appeals (First District) stated that, "[w]hen construing a criminal statute which does not expressly contain a mens rea requirement, we must bear in mind that '[c]riminal intent has generally been viewed as a presumptive element in criminal offenses.'"

Les Miller, special counsel to the Superintendent of the Indiana State Police, also asked if the same "knowingly, intentionally, or recklessly" criminal intent language could be included in a criminal offense found on Page 43 of PD 3343 in the State Police data and information programs law that currently states, "An official who knowingly makes a false return of information . . . commits a Class A misdemeanor."

After a brief discussion, the Commission decided to not make any changes to the language in question on Pages 43, 81, 94, and 96 of PD 3343 in the introduced version of the Title 10 recodification bill but to have a "companion bill" drafted to address these issues.

Brad Gavin, general counsel from the State Emergency Management Agency, then distributed a memo to CRC members concerning the Interstate Civil Defense and Disaster

Compact and the Interstate Earthquake Emergency Compact. Mr. Gavin said these two interstate compacts had been superseded by the Emergency Management Assistance Compact enacted in 1998.

After a brief discussion, the Commission decided to leave the two earlier interstate compacts in the introduced version of the Title 10 recodification bill and repeal these provisions in the "companion bill."

IV. PROPOSED TECHNICAL CORRECTIONS BILL

Mr. Craig Mortell presented PD 3832, the latest draft of the 2003 technical corrections (TC) bill, to the Commission. Mr. Mortell said that PD 3832 differs somewhat from PD 3649, the draft presented at the Commission's October meeting, in that PD 3832 incorporates certain refinements and additions, and a number of sections present in PD 3649 had been deleted from PD 3832. Additions were made, he said, because a few additional technical problems were recognized after PD 3649 was drafted. The deletions were possible, he said, because it was recognized that some SECTIONS in PD 3649 that addressed conflicts (i.e., instances in which a single Indiana Code section was amended by two 2002 acts that did not recognize each other) involved conflicts between the 2002 TC bill and another bill and the other bill incorporated the same changes that were made by the TC bill.

Directing the Commission's attention to the SECTION-by-SECTION outline of PD 3832, Mr. Mortell pointed out two SECTIONS that warranted special attention. Echoing an earlier comment by Mr. Stieff, Mr. Mortell said that the Office of Code Revision (OCR) tries hard to ensure that the TC bill addresses only purely technical problems and does not make any substantive change in the law. These two SECTIONS, he said, were "close calls" in this respect, and it seemed appropriate to discuss them at some length so that the Commission could understand them and decide for itself whether they merited inclusion in the TC bill.

The first was SECTION 97 of PD 3832, which amends IC 35-50-2-9. Mr. Stieff offered this explanation: IC 35-50-2-9 was amended in Senate Enrolled Act 426 of the 2002 session. The SECTION amending IC 35-50-2-9 was added to Senate Bill 426 by floor amendment. The floor amendment contained a flaw. One line that was present in IC 35-50-2-9 before the 2002 session was deleted -- not stricken, but simply deleted -- from the version of IC 35-50-2-9 being amended by Senate Bill 426. Mr. Stieff stressed that this deletion was unquestionably inadvertent; that the deletion had clearly created a problem in the statute; and that there was a single, obvious solution to the problem: to restore the line deleted by the floor amendment exactly as it had read before the deletion. Mr. Mortell added that OCR had informed the Prosecuting Attorney's Council and the Public Defender Council of this proposed correction in IC 35-50-2-9.

The second SECTION of PD 3832 brought to the Commission's attention was SECTION 70, which amends IC 21-3-1.7-8 so as to resolve the conflict between the amendments to IC 21-3-1.7-8 made by House Enrolled Act 1196 and Senate Enrolled Act 175 of the 2002 session. OCR, Mr. Mortell said, had initially determined that this conflict was not appropriate for resolution in the TC bill because:

- (1) any change in a mathematical formula will presumably change the answer you derive when you run numbers through the formula;
- (2) SEA 175 changed the formula set forth in IC 21-3-1.7-8 in one way;
- (3) HEA 1196 changed the formula set forth in IC 21-3-1.7-8 in a different way; and
- (4) therefore, SEA 175 and HEA 1196 seemed to be in substantive conflict because each act by itself would make the formula in IC 21-3-1.7-8 produce a

different answer than would be produced under the other act.

Mr. Mortell explained, however, that the director and deputy director of LSA's Office of Bill Drafting and Research (OBDAR) had assured OCR that the conflict between the SEA 175 and HEA 1196 amendments to IC 21-3-1.7-8 was not substantive in nature. Mr. Mortell read from an email in which George Angelone, deputy director of OBDAR, pointed out the following: ". . . there is no possibility of an 'actual' conflict, since the provision stricken by SB 175 deals with a hypothetical situation of a referendum in 2002 that would affect 2003 only. There are no referendums in 2002."

Mr. Jon Laramore, Commission member representing Governor Frank O'Bannon, said he had given the the bill to several persons who would be affected, and they reported back that there were no problems.

The Commission, by consent, decided to approve the TC bill draft with SECTION 97 and SECTION 70 included.

V. REVIEW OF MINUTES

The Commission approved by consent the minutes of the Commission's last meeting on October 16, 2002.

VI. CLOSING

Senator Kenley said he would sponsor the Title 10 recodification and the Title 10 companion bill, and Representative Frenz said he would sponsor the technical corrections bill.

Mr. Stieff asked for Commission approval to include the following language in all bills approved by the Commission: "The introduced version of this bill was prepared by the Code Revision Commission." A motion to include the language was made, seconded, and approved by consent.

VII. ADJOURNMENT

The meeting was then adjourned by the Chairman at 11:35 a.m.